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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91170274
Party	Plaintiff Central Mfg. Inc. a/k/a Central Mfg. Co.  Central Mfg. Co. (Inc.) P.O. Box 35189 Chicago, IL 60707-0189 UNITED STATES
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

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CENTRAL MFG. CO.

Opposer,

Vs.

Opposition No: 91170274

TARGET BRANDS, INC.

Applicant.

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**RESPONSE TO APPLICANTS' MOTION TO DISMISS FOR  
FAILURE TO STATE A CLAIM AND MOTION FOR JUDGEMENT**

NOW COMES the Opposer in response to Applicants Motion to dismiss for failure to state a claim and states as follows:

Applicant seeks dismissal of Opposer's Opposition based upon the fact that the Opposer has filed a notice of opposition as to only the goods in International Class 28 "bean bags" of applicant's multi class Application SN 78/508,108.

Applicant's multi class Application SN78/508,108 published for Opposition in international class 28 goods. The Opposer filed a timely request for an Extension of time to Oppose and commenced settlement talks with the Applicant. Pursuant to an Exhibit attached to Applicant's Motion to Dismiss for Failure to State a Claim, the Applicant unbeknownst to the Opposer file an Amendment after Publication on Feb. 9, 2006 deleting "bean bags in International Class 28" from Application SN 78/508,108. Opposer

within the extension of time filed a timely Opposition on March 21, 2006. Applicant now moves for dismissal.

#### OPPOSER IS ENTITLED TO JUDGMENT AS A MATTER OF LAW

In view of the fact that the said application SN 78/508,108 published on November 22, 2005 in Class 28 for the goods listed as “bean bags”. The Potential Opposer file a timely request for an Extension of time then file a timely Notice of Opposition, the Opposer is entitled to have this Board enter judgment against the Applicant in this case. The fact that the Applicant chooses to file an Amendment after Publication to delete “bean bags in International Class 28” is not valid defense against this Board entering judgment against the Applicant in this case because the Opposer had filed a timely Notice of Opposition within the extension period. If applicant position was sustainable, it would mean that any party could merely file a multi class Application and after it publishes the Applicant could see what goods any party may choose to file an Opposition and to amend after publication in order to avoid an Opposition. This Board as a matter of law does not condone this conduct.

The fact that the Applicant has chosen to amend after publication requires pursuant to Section 2.84 the examining attorney may, only with the permission of the Director, exercise jurisdiction over the application. The applicant has not provided any evidence that the note to the file of Application was issued pursuant to the authority of the Director and/or that the examining attorney had the permission of the director to even exercise jurisdiction over the application as required by Section 2.84. Based upon the evidence and exhibit provided by the Applicant attached to its Motion to Dismiss, there is no evidence that the document was issued “with the permission of the director”.

Consequently, the Board must disregard the attached document captioned “Note to the File” which states “changed Tradeups to delete class 28 per 2-9-06 fax.” The said document does not contain any language that it was issued under the authority of the Director as required by Section 2.84 and is void *ab initio* .

The fact that the Application was subject to an inter party proceeding once the Potential Opposer filed an Extension to Oppose and then filed its timely Opposition within the period allowed by the Board. The fact that the Applicant filed its amendment after the said mark had published and after the opposer filed its extension to opposer the Board is well within its discretion to grant the Opposer a default judgment against the Applicant.

WHEREFORE, the Opposer prays that the Board deny Applicant’s motion to dismiss and grant the Opposer a default judgment against the Applicant as to Application SN 78/508,108 as to International class 28 goods.

RESPECTFULLY SUBMITTED,

/Leo Stoller/  
Leo Stoller, President  
CENTRAL MFG. CO., Opposer/Respondent  
7115 W. North Avenue #272  
Oak Park, Ill. 60302  
(773)-589-0340

Date: April 19, 2006

**Certificate of On-Line Filing**

I hereby certify that on April 19, 2006, this paper is being filed online in this case with the Trademark Trial and Appeal Board.

/Leo Stoller/

### **Certificate of Service**

I hereby certify that on April 19, 2006, a copy of the foregoing Response to Motion to Dismiss and Motion for Judgment

Was sent by First Class mail with the U.S. Postal Service in an envelope addressed to:

Jams R. Steffen  
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90 South Seventh Street  
Minneapolis, MN 55402-3901

/Leo Stoller/

Leo Stoller

Date: April 19, 2006

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#### **§2.84 Jurisdiction over published applications.**

(a) The trademark examining attorney may exercise jurisdiction over an application up to the date the mark is published in the *Official Gazette*. After publication of an application under section 1(a), 44 or 66(a) of the Act, the trademark examining attorney may, with the permission of the Director, exercise jurisdiction over the application. After publication of an application under section 1(b) of the Act, the trademark examining attorney may exercise jurisdiction over the application after the issuance of the notice of allowance under section 13(b)(2) of the Act. After publication, and prior to issuance of a notice of allowance in an application under section 1(b), the trademark examining attorney may, with the permission of the Director, exercise jurisdiction over the application.

(b) After publication, but before the certificate of registration in an application under section 1(a), 44 or 66(a) of the Act is printed, or before the notice of allowance in an application under section 1(b) of the Act is printed, an application that is not the subject of an *inter partes* proceeding before the Trademark Trial and Appeal Board may be amended if the amendment does not necessitate republication of the mark or issuance of an Office action. Otherwise, an amendment to such an application may be submitted only upon petition to the Director to restore jurisdiction over the application to the trademark examining attorney for consideration of the amendment and further examination. The amendment of an application that is the subject of an *inter partes* proceeding before the Trademark Trial and Appeal Board is governed by §2.133.